

1 COOLEY LLP
2 MICHAEL A. ATTANASIO (151529)
3 (mattanasio@cooley.com)
4 MICHELLE C. DOOLIN (179445)
5 (doolinmc@cooley.com)
6 LEO P. NORTON (216282)
7 (lnorton@cooley.com)
8 BRADLEY A. LEBOW (240608)
9 (blebow@cooley.com)
10 4401 Eastgate Mall
11 San Diego, CA 92121
12 Telephone: (858) 550-6000
13 Facsimile: (858) 550-6420
14 Attorneys for Defendant
15 SONY ELECTRONICS INC.

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 In Re SONY VAIO COMPUTER
19 NOTEBOOK TRACKPAD LITIGATION

Case No. 09-CV-2109 AJB (MDD)

**DEFENDANT SONY ELECTRONICS
INC.'S EVIDENTIARY OBJECTIONS
TO THE DECLARATION OF
AARON OLSEN FILED IN SUPPORT
OF JOINT MOTION FOR
DETERMINATION OF DISCOVERY
DISPUTE – SCOPE OF DISCOVERY**

Judge: Hon. Mitchell D. Dembin
Courtroom: D

Defendant Sony Inc. (“Sony”) hereby objects to portions of the Declaration of Aaron Olsen (“Olsen Declaration”) submitted by plaintiff in support of the Joint Motion for Determination of Discovery Dispute – Scope of Discovery (“Joint Motion”).

I. EVIDENTIARY OBJECTIONS

In violation of the Federal Rules of Evidence and ample legal precedent, the Olsen Declaration: (1) contains numerous conclusions and arguments; and (2) lacks any foundation establishing Olsen’s personal knowledge of the purported facts contained therein. Accordingly, Sony objects to portions of the Olsen Declaration.

Paragraphs 8-10 of the Olsen Declaration contain the following legal conclusions and arguments (shown bolded and italicized):

- “Lead counsel have received hundreds of consumer complaints, and these complainants own different VAIO notebook series *yet these consumers experienced the identical Defect alleged by Plaintiff*” (¶ 8);
- “Since the filing of this case, Sony has released at least four bulletins, *all concerning myriad VAIO models concerning the very trackpad errors complained about in this case.*” (¶ 9);
- “Further, according to publicly available information, *at least some of the specific part numbers making up the touchpad modules for specific series, such as the SZ series, are simply differentiating between colors, or the parts are interchangeable.*” (¶ 10).

Accordingly, these portions of Paragraphs 8-10 are improper and objectionable. *See Zeinali v. Raytheon Co.*, No. 07cv1852–MMA (CAB), 2011 WL 2669459, at *2 n.3 (S.D. Cal. July 7, 2011) (sustaining objections to portions of declaration setting forth legal conclusions); *Brae Asset Funding, L.P. v. Applied Fin., LLC*, No. C 05-02490 WHA, 2006 WL 2355474, *5 (N.D. Cal. Aug. 14, 2006) (striking declaration which was “full of legal argument and conclusions by the hearsay declarant ... an attorney for [the defendant]”); *cf.* N.D. Cal. Local Rule 7-5(b) (“An affidavit or declarations may contain only facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument.”).

Sony also objects to those portions of Paragraphs 8-10 because they assert opinions not rationally based on the declarant's personal knowledge. FED. R. CIV. P. 701 ("[T]he witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness"). Mr. Olsen – plaintiff's counsel – does not and cannot establish his personal knowledge for any of the so-called facts contained in paragraphs 8-10, i.e., that the "hundreds" of consumers who have submitted complaints "experienced the identical Defect alleged by Plaintiff," that the Sony bulletins relating to the "myriad VAIO models" all concern "the very trackpad errors complained about in this case," and that "the touchpad modules for specific series, such as the SZ series, are simply differentiating between colors, or the parts are interchangeable." Therefore, the above portions of Paragraphs 8-10 are improper and objectionable on this ground, as well. *See, e.g., Brew v. City of Emeryville*, 138 F. Supp. 2d 1217, 1227 (N.D. Cal. 2001) (striking declaration that contained "hearsay, lack[ed] foundation, and form[ed] conclusions as opposed to stat[ing] facts" because the "declarant must state facts showing his or her connection to the matters stated, [and] establishing the source of the information").

II. CONCLUSION

For the reasons stated herein, Sony objects to portions of the Olsen Declaration specified above.

Dated: November 22, 2011

COOLEY LLP
MICHAEL A. ATTANASIO (151529)
MICHELLE C. DOOLIN (179445)
LEO P. NORTON (216282)
BRADLEY A. LEBOW (240608)

By: /s/ Leo P. Norton

Leo P. Norton (216282)

Attorneys for Defendant
SONY ELECTRONICS INC.
Email: lnorton@cooley.com

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2011 I electronically filed

**DEFENDANT SONY ELECTRONICS INC.'S EVIDENTIARY OBJECTIONS TO
THE DECLARATION OF AARON OLSEN FILED IN SUPPORT OF JOINT
MOTION FOR DETERMINATION OF DISCOVERY DISPUTE – SCOPE OF
DISCOVERY**

with the Clerk of Court using the CM/ECF system, which will send notification of such filing to
the following attorneys of record at the following listed email addresses.

- **Michael A Attanasio**
mattanasio@cooley.com, smiyajima@cooley.com
- **Michelle C Doolin**
mdoolin@cooley.com, bambrose@cooley.com
- **William James Doyle , II**
bill@doylelowther.com, john@doylelowther.com
- **Amber Lee Eck**
ambere@zhlaw.com, winkyc@zhlaw.com
- **Michael A. Geibelson**
MAGeibelson@rkmc.com, svduenas@rkmc.com
- **Alreen Haeggquist**
alreenh@zhlaw.com, winkyc@zhlaw.com
- **Elizabeth D. Le**
edlee@rkmc.com, lrbryant-wilson@rkmc.com
- **Bradley A. Lebow**
blebow@cooley.com, daland@cooley.com, nernest@cooley.com
- **John A. Lowther**
john@doylelowther.com
- **Leo P Norton**
lnorton@cooley.com, maraujo@cooley.com
- **Aaron M. Olsen**
aaron@zhlaw.com, winkyc@zhlaw.com
- **Helen Irene Zeldes**
helenz@zhlaw.com

///

1 This document was served on all counsel who are deemed to have consented to electronic service.
2 Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5, all other counsel of
3 record not deemed to have consented to electronic service were served with a true and correct
4 copy of this document via U.S. First Class Mail. However, the undersigned is not aware of
5 anyone who has not consented to electronic service.



Nicole Ernest
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Telephone: (858) 550-6000
Fax: (858) 550-6420
Email: nernest@cooley.com